to him by the rules, 'unless there has been on his part some conduct raising an equity against him', or in case of 'inevitable accident'.

Applying those principles to the application before me the respondent should not be deprived of the advantage given to him by the Civil Procedure Code, as there has been no conduct on his part raising an equity against him nor has there been an inevitable accident.

Mr. Joaquim, for the respondents, also cited the case of *In re Coles and Ravenshear*[2], where the Court of Appeal held that a mistake of counsel as to the effect of Order LVIII, r. 15, whereby an appeal was not brought until after the expiration of the time thereby allowed for appealing, was not sufficient ground for granting special leave to appeal out of time.

Mr. Chia, for the applicant, cited the cases of *In re Manchester Economic Building Society*[3], and also *Cusack v. London and North Western Railway Co.*[4].

In the former case it is quite clear from the arguments of counsel at page 491 and from the judgment of Brett M. R. in the Court of Appeal at page 498, that in that particular case the Court below had made a mistake.

With regard to the latter case, all that it decided was that the Court has a discretion in granting an extension of time in which to appeal, and that such discretion should be exercised on a consideration of the circumstances of each case as it arises.

In exercising my discretion on the circumstances of this particular application I do so following the principles laid down in the case of *In re Helsby*[1] *(supra)*, with which I agree, and which were followed in the case of *In re Coles and Ravenshear (supra)*.

Accordingly this application to appeal out of time is dismissed with costs.

*Application Dismissed.*

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## LIM HEE CHUAN v. TOH PHAIK HAR (f).

[App. Civil Juris. (Bostock Hill, J.) August 27, 1948]

[Penang — Civil Appeal (from Magistrate) No. 7 of 1948]

*Minor Offence Ordinance (Cap. 24) S. 37 (1) — Maintenance of wife — Marriage according to Buddhist rites — Application to call further evidence on appeal to show husband is a Christian — Christian Marriage Ordinance (1940).*

This was an appeal from a decision of the Magistrate, Penang, who made an order for the maintenance against the appellant. At the trial the respondent-wife alleged that she was married to the appellant-husband according to "Chin Choay" rites. On appeal, an application was made to call further evidence to show (1) that the appellant-husband was a Christian at the time of the alleged marriage and (2) that therefore the alleged marriage was not a valid one.

**Held**, that the application must be refused firstly because of the general principle that the Courts are very reluctant to give any litigant a second chance to adduce at a later stage evidence that was in his possession in the lower Court and secondly because the evidence sought to be adduced in this case would tend to disprove a marriage that has already for several years been recognised by the parties and by their families.

*Cases referred to :—*

(1) *Chia Teck Leong and 4 others v. Estate and Trust Agencies (1927) Limited* (1939) 8 M.L.J. 123.
(2) *Shedden v. Patrick* L.R.I. Sc. 470 at p. 545.
(3) *Nash v. Rochford Rural Council* (1917) 1 K.B. 393.
(4) *Sanders v. Sanders* 19 Ch. D. 380.
(5) *Brown v. Dean* (1910) A.C. 373.
(6) *R. v. Copestake* (1927) 1 K.B. 468 at p. 477.
(7) *Mui Siu Hing v. Lee Hong Kee* (1940) 9 M.L.J. XXV.
(8) *Elliott v. Totnes Union* 57 J.P. 151.
(9) *In re Shephard, George v. Thyer* (1904) 1 Ch. 456.

CIVIL APPEAL FROM MAGISTRATE.

*F. G. Pooley* for the Appellant.

*R. D. Hume* for the Respondent.

**Bostock Hill, J.** : — This is an appeal from a decision of the Magistrate, Penang, under Section 37 (1) of the Minor Offences Ordinance (Cap. 24).

The Respondent had applied for an Order for maintenance against the Appellant alleging that she had married him in 1943 according to "Chin Choay" rites. A Certificate of the marriage (which appears to have been a Buddhist ceremony) was put in as Exhibit P. 15. Two children were born of the marriage which was admitted by Appellant both in his evidence in the Magistrate's Court and in correspondence between the Parties before the case went to Court.

It is sufficient to say that there were disputes between the Parties and that they separated and finally the Respondent applied to the Magistrate for an Order for maintenance.

The Magistrate took the view that the Appellant was entirely in the wrong and had behaved very badly, and made an Order for $40/- per month against him in favour of the Respondent.

Against this Order the Appellant appeals and in effect his sole ground of appeal is that there was no valid marriage as he was a Christian at the time. He asks leave to adduce additional evidence to prove this and then states that he will rely on Section 3 of the Christian Marriage Ordinance, 1940 (No: 10/1940). This Section reads :—

> Every marriage between Christians and every marriage between persons one of whom is a Christian shall be solemnized in accordance with the provisions either of this Ordinance or of the Civil Marriage Ordinance, 1940, and every such marriage solemnized otherwise than as provided in this section shall be invalid.

"Christian" is defined in the Ordinance as being a person professing the Christian religion.

In his Petition for leave to adduce further evidence the Appellant states: "Your Petitioner is a Christian having been baptized at the Chinese Methodist Episcopal Church, Penang, on the 26th day of February, 1914, and never having renounced the Christian religion."

It is to be noted that on 26th February, 1914, the Appellant was just over 1 month old and the mere fact of the baptism at that early age would not in my opinion of necessity make the Appellant a person professing the Christian religion — See *Chia Teck Leong and 4 others v. Estate and Trust Agencies (1947) Limited*[1].

Clearly oral evidence would have to be taken and Mr. Pooley stated in Court that he would be prepared to call such evidence.

The point I am called on to decide is whether I will in the exercise of my discretion allow such evidence to be called.

The matter is entirely one that lies in the discretion of the Court and the principles underlying the exercise of that discretion are discussed in the English Annual Practice under O. 58 r. 4 under the sub-heading "Further evidence", and a number of cases are there cited. (The Annual Practice, 1946-1947, p. 1306). The main principle is there set out by *Lord Chelmsford in Shedden v. Patrick*[2]

> It is an invariable rule in all the Courts....that if evidence which either was in the possession of parties at the time of a trial or by proper diligence might have been obtained, is either not produced, or has not been procured, and the case is decided adversely to the side to which the evidence was available, no opportunity for producing that evidence ought to be given by the granting of a new trial.

This rule was adopted by Scrutton, L.J. in *Nash v. Rochford Rural Council*[3].

There is also the moral aspect of the case to consider. In *Sanders v. Sanders*[4] a noteworthy passage in the judgment of Jessel, M. R. is as follows :—

> As it has often been said, nothing is more dangerous than to allow fresh oral evidence to be introduced after a case has been discussed in Court. The exact point on which evidence is wanted having thus been discovered, to allow fresh evidence to be introduced at that stage would offer a strong temptation to perjury. Moreover, speaking for myself, I think that when an application is made for an indulgence, the moral elements of the case ought to be taken into consideration. I am more inclined to grant it when what appears to be a substantially good and honest case is in danger of being defeated on technical grounds, than in favour of an attempt to defeat a good case on technical grounds.

Mr. Pooley for the Appellant argued that he should be allowed to call this fresh evidence on the ground that it would be conclusive and cited *Brown v. Dean*[5] and *R. v. Copestake*[6]. On this point I feel by no means convinced that the evidence would, if allowed to be given, be conclusive. Firstly, to prove that the Plaintiff-Appellant "professed" the Christian religon at or about the time of his marriage might not be easy, and secondly, if he did succeed in so proving, would it necessarily disentitle the Respondent to an order under Section 37 (1) of the Minor Offences Ordinance?

Mr. Hume took the point that though the Appellant might (if believed) show that his marriage with Respondent was invalid under the Christian Marriage Ordinance, 1940, yet it might not be invalid for all purposes. He instanced that polygamous marriages had been recognized as entitling the "secondary" wives to be considered "wives" within the meaning of the Minor Offences Ordinance Section 37 and cited a judgment of Terrell, Ag. C.J. in *Mui Siu Hing v. Lee Hong Kee*[7]. One passage in particular in that judgment is to be noted :—

> ....it is even more perilous to assume that because an English Statute makes provision for a wife in the social conditions that prevail in England, a local Ordinance, based textually on the English Act (Section 37 of the Minor Offences Ordinance was being referred to) must be given the meaning that it would be given in England instead of the meaning which would reasonably be given to it in the Straits Settlements where entirely different social conditions prevail.

In the present case the Appellant and Respondent were married in 1943 according to "Chin Choay" rites. Both stated this on affirmation before the Magistrate and no mention was made in that Court of the Appellant being "a Christian". Mr. Pooley pointed out that Appellant's counsel retired at the beginning of the case, but I cannot help remarking that the whole of the correspondence before the hearing (both between the parties and between their Solicitors) spoke of their marriage. They lived together for several years and had 2 children. The ceremony appears from

Exhibit P. 15 to have been performed in a Buddhist Temple to the satisfaction of both parties who thereafter lived and spoke of themselves as man and wife. I am by no means prepared to find at this stage that such a marriage would not entitle the Respondent to claim as a wife under Section 37(i) of the Minor Offences Ordinance. It is a point on which much legal argument might be expended. The appellant, who all along contended that he was married to Respondent, accepted that position for several years and in the Magistrate's Court opposed Respondent's claim to maintenance only on other grounds. He now seeks to adduce fresh evidence which was in his possession not only at the time of the hearing before Magistrate but also when he was consulting his Solicitor beforehand, the effect of which, if it be believed, might be to bastardize his children and in effect (I use Mr. Hume's words) to perpetrate a heartless fraud on the Respondent.

The Courts have always shown an extreme reluctance to allow evidence from either husband or wife which would have the effect of bastardizing the children, and in England, have even been ready to enforce maintenance of a child by inferring from evidence of reputation and cohabitation that there had been a marriage even though there was no direct evidence of the marriage and the father denied it. In *Elliott v. Totnes Union*[8] (cited in Stone's Justices' Manual, 1947 Vol. 2 p. 2226) such decision by the Justices was upheld in the Queen's Bench Division.

And in another case, *In re Shephard, George v. Thyer*[9] it was held that even though the marriage such as was allged to have taken place in France was impossible according to the French law and the habits of law-abiding people in France yet this fact was not enough to rebut the presumption in favour of marriage arising from the long-continued cohabitation of the parties as man and wife.

I have referred to these two cases as they tend to show that the Court is slow to accept evidence tending to disprove a marriage that is established by cohabitation and repute.

Most of the cases in which the Courts have, as an indulgence, admitted fresh evidence that was available before the lower Court have been cases where either some technicality had been omitted or at least where it would not be necessary to take disputable oral evidence.

In the present case not only the general principle that the Courts are very reluctant to give any litigant a second chance to adduce at a later stage evidence that was in his possession in the lower Court, but also the very pertinent observations (cited above) of Jessel, M. R. in *Sanders v. Sanders*[4] together with the fact that the evidence sought to be adduced would tend to disprove a marriage that has already for several years been recognized by the parties and by their families, impel me to refuse the Appellant's petition to call further evidence.

Mr. Pooley stated that he had no other ground of appeal.

Accordingly, I dismiss the appeal with costs.

*Appeal Dismissed.*

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# NOTES OF CASES.

## FEDERATION.

*Civil Procedure — Pending action — Application for appointment of interim receiver — Injunction.*

In this case the plaintiff applied for the appointment of an interim receiver of certain properties, to which the plaintiff claimed to be entitled to a half share. The property included of businesses in Klang and Malacca and immoveable properties in Selangor, Malacca and Negri Sembilan. The plaintiff had filed caveats against the immoveable properties in Selangor and Negri Sembilan and the defendant said he was prepared to give an undertaking to the Court not to part with the properties pending the determination of the suit.

**Held,** (Spenser-Wilkinson, J.), that the undertaking by the defendant not to deal with or dispose of any of the assets in question in this suit would secure the plaintiff's position and therefore this was not a case in which an injunction should be granted.

**Chidambaram Chettiar v. Murugappa Chettiar & Others (K.L. Civil Suit No. 79 of 1948).** Decided on February 7, 1949.

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*Civil Procedure Code S. 299 — Application for release of property attached — Consent of both parties necessary before application can be heard by Court.*

In this case an application was made for the release of certain property attached by the District Court in a Civil Suit. The decree-holder was called before the Court to show cause why the property should not be released. The decree-holder appeared before the Court and consented to the matter being dealt with under S. 299(ii) but the objector-appellant asked for an adjournment to call a witness. The learned District Judge refused postponement and proceeded to dispose of the matter. The objector appealed.

**Held,** (Storr, J.), that as both parties had not consented to the matter being disposed of forthwith under S. 299(ii) of the Civil Procedure Code, the learned District Judge had no power to dispose of the matter as he did, and therefore his order must be set aside.

**Kandiah v. S. Ponniah Pillay & Anor. (Ipoh Civil Appeal No. 13 of 1948).** Decided on January 17, 1949.

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*Civil Procedure Code Chapter XXXIX, Ss. 127, 459 and 597 — Summary Procedure — Whether claim comes within the provisions of S. 459(i) of Civil Procedure Code — Power of Court to set aside ex parte decree in Summary Procedure suits.*

In this case the plaintiff firm and the defendant had agreed that in consideration of the defendant resigning from the plaintiff firm and leaving the Federation of Malaya the plaintiff firm would pay the debts amounting to $11,322.51 incurred by the defendant. The defendant did resign from the defendant firm but did not leave the Federation of Malaya. The plaintiff firm thereupon sued the defendant by way of summary procedure claiming the sum of $11,322.51 and obtained judgment. The defendant applied to have the decree set aside.

**Held,** (Willan, C.J.), (1) that the claim in this case was in fact a claim for damages for alleged breach of agreement and the suit was not properly admitted as a Summary Procedure Suit; (2) that the Court has power under S. 597 of the Civil Procedure Code to set aside the decree in this case and (3) that it was necessary for the ends of justice that the decree should be set aside.

**Mitchell Cotts & Co., Ltd. v. E. A. Bryanne (K.L. Civil Suit No. 7 of 1949).** Decided on February 22, 1949.

*Contract — Defence of non est factum — False representation.*

In this case the plaintiff sued the defendants for damages for breach of contract. It appeared that the first defendant, who did not know English, was induced by the second defendant, his brother, to sign the document containing the contract, on the understanding that it was a matter of witnessing his brother's signature.

**Held,** (Laville, J.), that on the facts the defence of **non est factum** was open to the first defendant and the first defendant could not be held liable on the contract.

**Awang bin Omar v. Haji Omar bin Ismail & Anor.** (Johore Civil Suit No. 5 of 1947). Decided on January 13, 1949.

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*Courts Ordinance 1948 — Civil Procedure Code S. 597 — 1932 Rule 1 Sub-Rule 30 — Registrar's Appeal Rules 1949 — Appeal from Registrar — Interrogatories.*

This was an application by way of appeal from the decision of the Registrar disallowing four interrogatories exhibited by the plaintiff for the interrogation of the defendants. It was argued for the appellants (1) that although the Registrar's Appeal Rules 1949 came into force after the date of the decision of the Registrar, nevertheless they had a right of appeal, (2) that the learned Registrar was wrong in disallowing the interrogatories.

**Held,** (Spenser-Wilkinson, J.), (1) that the words of Registrar's Appeal Rules 1949 were sufficiently clear to show an intention to make them retroactive; (2) that even if the words are not sufficiently clear, the general purpose of those rules as extracted from the rules themselves and from the substance of the legislation under which they are made, made that intention abundantly clear; (3) that therefore an appeal lay from the decision of the Registrar although the decision was made before the rules were promulgated.

**Held also** that as the appellant was in effect asking for mere evidence of the facts in dispute and not a part of the facts themselves, the interrogatories were rightly disallowed by the Registrar.

**Chellapah v. Malayan Railway Administration** (Selangor Civil Suit No. 36 of 1948). Decided on March 4, 1949.

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*Criminal Procedure Code Ss. 307 and 362(i) — Maintenance of wife — Appeal from order of Magistrate — Whether order of Magistrate was order in a criminal cause or matter — Courts Ordinance, 1948, S. 50(2).*

In this case the appellant appealed against an order of the Magistrate at Kuala Lumpur who had ordered him to pay $80.00 within one week or in default undergo six weeks' imprisonment. The learned Magistrate had found that the appellant had wilfully neglected to comply with a previous order for maintenance of his wife and child. One of the questions to be decided was whether the appeal should have been made under S. 307 of the Criminal Procedure Code or under the Civil Procedure Code.

**Held,** (Russell, J.), (1) that the order of the Magistrate was an order pronounced in a criminal cause or matter and therefore the appeal was properly brought under S. 307 of the Criminal Procedure Code; (2) that on the facts, the Magistrate could have come to no other conclusion than he did and the appeal must therefore be dismissed.

**Wong Eng Fook v. Ho Kiat Moi (f) (K.L. Criminal Appeal No. 10 of 1949).** Decided on April 5, 1949.

*Criminal Procedure Code Ss. 140, 141 and 170 — Preliminary Enquiry — Admissibility of evidence — Delay in writing grounds of judgment.*

In this case the appellant was originally charged with another accused in connection with charges of abduction and extortion alleged to have been committed in August 1945. At the conclusion of the preliminary enquiry the learned District Judge committed the accused for trial before the High Court on the charge of extortion but decided to try the appellant before himself on the charge under Section 365 of the Penal Code for abduction. The appellant was convicted. On appeal it was argued **inter alia** (1) that the learned trial Judge reached his decision on evidence which was not properly admissible against the appellant, as a large part of the evidence given at the preliminary enquiry was evidence which was admissible against the other accused but not admissible against the appellant; (2) that the evidence against the appellant was unsatisfactory; (3) that the long delay in delivering the grounds of judgment after the lapse of two years was unsatisfactory and prejudiced the appellant in his appeal.

**Held,** (Spenser-Wilkinson, J.), that in view of the confusion between the admissible and the inadmissible evidence in this case, of the fact that the admissible evidence was not as unassailable as the learned District Judge appeared to have thought and of the possibility of prejudice to the appellant through the long delay in writing the grounds of judgment, it was impossible for the conviction to stand.

**Voon Chin Fatt v. Public Prosecutor (Selangor Criminal Appeal No. 3 of 1949).** Decided on March 8, 1949.

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*Emergency Regulations — Charge of having under control a firearm — Knowledge of existence of firearm.*

In this case the accused were charged that they had under their control a firearm. At the close of the case for the prosecution it appeared that the revolver was found in the house of the first and third accused in the folds of a fishing net. The premises were frequented by a large number of persons some of them for the purpose of purchasing and smoking opium and others being members of the crew of a fishing vessel owned by the first accused. The second accused had come to stay in the house a few days before the firearm was found.

**Held,** (Thomson, J.), that on the facts the prosecution had not proved that any of the accused had knowledge of the existence of the firearm and therefore the accused must be acquitted.

**Public Prosecutor v. Ong Huat Chan & Others (Perak Criminal Trial No. 10 of 1949).** Decided on February 17, 1949.

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*Excise Enactment (Cap. 133) S. 62(c) — Excise Rules 1923 — Keeping dutiable liquor on licensed premises — When duty is payable — Bail pending appeal — Procedure on appeal.*

This was an appeal against the conviction of the appellant on a charge of knowingly keeping on licensed premises intoxicating liquor on which excise duty had not been paid. The liquor, the subject matter of the charge, was at the time of the alleged offence in the manufacturing part of the distillery and one of the grounds of appeal was that the prosecution had not proved that excise duty was payable at the time of the alleged keeping of the liquor.

**Held,** (Russell, J.), (1) that excise duty on intoxicating liquor manufactured locally in a distillery is payable only on removal from the distillery; (2) that on the facts of this case as the liquor was at the time of the alleged offence in the manufacturing part of the distillery, no duty was payable in respect of such liquor at that time and therefore no offence under S. 62(c) of the Excise Enactment had been committed by the appellant.

**Sin Yong Chang v. Public Prosecutor (K.L. Criminal Appeal No. 50 of 1948).** Decided on February 11, 1949.

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*Excise Rules, Rule 92 — Possession of toddy to which water has been added — Scope of rule.*

In this case the respondent was charged in that being a licensee and a person employed by the Government for the sale of toddy he had in his possession toddy to which water had been added. At the trial the learned Magistrate acquitted the respondent on the ground that the toddy was overnight toddy and not intended for sale to the public and therefore not within the scope of Rule 92 of the Excise Rules which he held was meant to cover toddy which is for sale to the public. The Public Prosecutor appealed.

**Held,** (Spenser-Wilkinson, J.), (1) that the wording of Rule 92 of the Excise Rules is clear and unambiguous and contained no exception in favour of overnight toddy nor of any other toddy that is not for sale to the public; (2) that if the respondent was in possession of toddy to which water had been added, he was guilty of a contravention of Rule 92.

**Public Prosecutor v. C. Raja (K.L. Criminal Appeal No. 53 of 1948).** Decided on March 2, 1949.

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*Increase of Rent (Restriction) Enactment, Johore, 1939 — Control of Rent Ordinance 1948 — Effect of repeal on acquired rights — Effect of notice to quit — Interpretation and General Clauses Ordinance 1948.*

In this case the respondent had given a notice to quit to the appellant expiring on the 30th of September 1947, alleging that the premises were required for his own use. Subsequent to the notice, the Control of Rent Ordinance came into force. It was argued for the appellant that he became a Statutory tenant under Section 15 of the Control of Rent Ordinance 1948 in that he held over since the date of the expiry of the notice and was still in possession and that in order to terminate his tenancy he must be served with a notice to quit again as provided for by Section 16 of the Control of Rent Ordinance in regard to statutory tenants.

**Held,** (Laville, J.), (1) that the effect of the notice to quit in this case was that the tenant holding over became a trespasser, with the proviso that except in circumstances falling within Section 8 of the Increase of Rent (Restriction) Enactment 1939, no action could be taken to eject him without an order of the Rent Board; (2) that the repeal of the Increase of Rent (Restriction) Enactment did not affect its previous operation or abrogate anything properly done thereunder, and therefore the notice to quit duly given for the purpose of that Enactment remained a good notice even after that enactment was repealed; (3) that in this case as the landlord had proved that he required the premises for his own use and had determined the tenancy according to law, the provisions of Section 13(f)(i) of the Control of Rent Ordinance were satisfied and this prevented the ex-tenant from becoming a statutory tenant by holding over.

**Gan Boon Puak & Anor. v. Lim Tye Hian (J.B. Civil Appeal No. 1 of 1949).** Decided on February 26, 1949.

*Landlord and Tenant — Payment of rent by sub-tenant to superior landlord.*

This was an appeal against the order of the learned District Judge, Perak, who gave possession of the premises in question to the respondent. It appeared that the appellant was a sub-tenant of the respondent and had paid the rent to the landlord after receipt of a letter from the landlord that the respondent was no longer the chief tenant of the premises. The respondent made several demands for payment of the rent and subsequently brought proceedings to recover the arrears of possession and rent.

**Held,** (Storr, J.), (1) that where the payment to the superior landlord is a voluntary payment and not a compulsory one, then that payment cannot be treated as a set-off or as payment of the rent due to the immediate landlord; (2) that therefore in this case the respondent was entitled to the order for possession and the appeal must be dismissed.

**Ow Kong v. Cheang Kwong Yen (Ipoh Civil Appeal No. 12 of 1948).** Decided on April 2, 1949.

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*Mohammedan Ordinance Ss. 20, 22 and 29 — Mohammedan Law — Jurisdiction of Magistrate — Application for Maintenance — Order of nusus — Minor Offences Ordinance S. 37 — Civil or Criminal Proceedings — Revision — Courts Ordinance (Cap. 10) S. 19.*

In this case the parties had appeared before the Kathi of Malacca who inquired into the matter and eventually declared the wife (respondent) **nusus** under Section 20 of the Mohammedan Ordinance. Subsequently the wife (respondent) applied for maintenance to the Magistrate's Court. The learned Magistrate held that as the Kathi had made no order as to maintenance therefore he (the Magistrate) had jurisdiction to hear the wife's claim in accordance with Section 37 of the Minor Offences Ordinance. The learned Magistrate ordered the husband to pay maintenance. The husband applied to the Court to have the proceedings set aside on the ground that the decision was wrong in law.

**Held,** (Callow, J.), (1) that the institution of the claim for maintenance in the Magistrate's Court after the Kathi had expressly found the respondent **nusus** and therefore disentitled to any maintenance was an abuse of process; (2) that therefore the order for maintenance must be set aside.

**Mohamed Saad bin Mohamed Nor v. Hasnah binte Adam (Malacca Originating Motion No. 8 of 1948).** Decided on January 6, 1949.

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*Opium and Chandu Proclamation, 1946, Ss. 3(1) and 17 — Opium and Chandu Rules, Rule 11 — Possession of Chandu — Knowledge of possession — Forfeiture of motor lorry — Opportunity to owner to show cause.*

This was an appeal against the conviction of the appellant for possession of chandu and against the order of forfeiture of the motor lorry, in which the chandu was found. It appeared that the first appellant was the lorry cleaner who had the general care and charge of the lorry and had the key of the locker in which the chandu was found. The second appellant was the lorry driver. At the trial the owner of the lorry was not given an opportunity to show cause why the lorry should not be forfeited.

**Held**, (Callow, J.), (1) that there was no evidence that the second appellant had possession, custody or control of the chandu and therefore his conviction must be set aside; (2) that there was evidence as against the first appellant, from which the learned District Judge could infer possession and, on the facts, his conviction was correct; (3) that as the owner of the lorry had not been given an opportunity of showing cause why the order for forfeiture should not be made, the order for forfeiture must be set aside.

**Lim Geok Ching & Anor. v. Public Prosecutor (Malacca Criminal Appeal No. 21 of 1948).** Decided on January 5, 1949.

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*Penal Code Ss. 323 and 352 — Charge of rioting amended to one of voluntarily causing hurt — Power of Appeal Court to alter finding of guilty of voluntarily causing hurt to finding of guilty of rioting, if the facts so warrant — Summary Trial — Offences in same transaction — Criminal Procedure Code Ss. 155, 166, 167, 173, 179 and 421.*

In this case the appellants were originally charged with rioting. At the end of the prosecution case the Court amended the charge against the accused to one of voluntarily causing hurt upon which latter charge the accused were ultimately convicted. On appeal it appeared that there was not sufficient evidence of voluntarily causing hurt against each of the accused, but there was evidence of rioting.

**Held**, (Laville, J.), (1) that it was open to the Appeal Court to reverse a finding which amounts to acquittal and substitute therefor a finding of conviction if the facts so warrant and the acquittal was based on wrong grounds; (2) that in this case the finding of guilty of voluntarily causing hurt should be altered to a finding of guilty of rioting.

**Paramasivan & Ors. v. Public Prosecutor (Johore Bahru Criminal Appeal No. 20 of 1948).** Decided on January 27, 1949.

## SINGAPORE.

*Criminal Trial — Joinder of charges of conspiracy with charges relating to specific offences committed in course of alleged conspiracy — Criminal Procedure Code Ss. 174 and 175 — Evidence Ordinance Ss. 10 and 30.*

At the trial of the accused in these cases it was argued that it was illegal to include a charge of conspiracy in an indictment which contained charges relating to specific offences committed in the course of the alleged conspiracy; and further that even if it was legal to do so, it was in fact improper having regard to the fair trial of all the accused.

**Held**, (Brown, J.), (1) that it is not illegal to include a charge of conspiracy in an indictment which contains charges relating to specific offences committed in the course of the alleged conspiracy; (2) that though S. 174 of the Criminal Procedure Code limits the number of offences for which an accused person may be charged and tried at one trial to three, yet under S. 175 of the Criminal Procedure Code when the offences form part of the same transaction a person may be charged with and tried at one trial for every such offence; (3) that in view of Section 30 of the Evidence Ordinance there is nothing improper in including a count of conspiracy in an indictment which contained charges relating to specific offences committed in the course of the alleged conspiracy.

*Penal Code S. 384 — Extortion — Proof of menaces with intent to extort — Duty of prosecution to elicit all essential evidence.*

This was an appeal against the conviction of the appellants (who were detectives) for putting one Lim Sye Chin in fear of detention for himself and one Tay Say Geok for the purpose of committing extortion.

**Held**, (Laville, J.), on the facts that the prosecution had failed to call evidence on many material points and had failed to establish beyond all reasonable doubt that it was by means of menaces that the two appellants sought to obtain money.

**Lim Gern Kheng & Another v. Public Prosecutor (Muar Criminal Appeal No. 23 of 1948).** Decided on February 19, 1949.

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*Penal Code S. 304A — Plea of guilty — Criminal negligence — Whether Magistrate should accept plea of guilty.*

In this case the appellant was charged in that she did cause the death of one Liew Kam Fook aged 10 months old by a negligent act not amounting to culpable homicide to wit, by allowing the ignorant mother of the deceased to administer an overdose of oleum chinnapodium when she was a nurse on duty and thereby committed an offence under S. 304A of the Penal Code. She pleaded guilty and her plea was accepted and she was convicted.

**Held**, (Spenser-Wilkinson, J.), in view of the difficulties of the law relating to criminal negligence and of the facts in this case, which were not simple, the learned District Judge should not have accepted the plea of guilty.

**Low Hiong Boon (f) v. Public Prosecutor (K.L. Criminal Appeal No. 12 of 1949).** Decided on March 17, 1949.

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**Rex v. Forrest & Others[1] (Singapore Assize Cases 277, 305 and 306 of 1948).** Decided on November 29, 1948.

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*Liquors Revenue Ordinance (Cap. 225) Ss. 38(1) and 87 — Sale of liquor from licensed premises for consumption on unlicensed premises.*

In this case the facts shortly were that two Revenue Officers took their seats on a table on the lawn of a Rest House, which was not licensed for the sale of intoxicating liquor, and ordered a chop and a bottle of beer. The waiter said that there was no beer for sale at the Rest House and the Revenue Officers then asked him to "go outside" and buy it. The waiter did so and bought the bottle of beer at a licensed premises with his own money. The waiter and the Managing Partner of the Rest House were charged and convicted for selling the bottle of beer at the Rest House, such Rest House not having been licensed. They appealed against their conviction.

**Held**, (Gordon-Smith, Ag. C.J.), (1) that on the facts the waiter purchased the bottle of beer as agent for the Revenue Officers and the only sale of beer was at the shop outside to the waiter as the agent of the Revenue Officers; (2) that the sale of beer at the shop outside was a sale to the Revenue Officers and that there was not, in law, a resale of the beer to the Revenue Officers at the Rest House.

**Lim Kiat Hean & Another v. Rex (Singapore Magistrate's Appeal No. 224 of 1948).** Decided on January 13, 1949.